

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

FOOD NOT BOMBS HOUSTON,           ]  
BRANDON WALSH,                    ]  
    Plaintiffs,                     ]  
                                      ]  
v.                                    ] C.A. No. 4:24-CV-338  
                                      ]  
THE CITY OF HOUSTON, TEXAS,       ]  
    Defendant.                     ]

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ORAL AND VIDEOTAPED DEPOSITION OF

PHILLIP PICONE

FEBRUARY 18, 2025

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ORAL DEPOSITION OF PHILLIP PICONE, produced as a witness at the instance of the Defendant, and duly sworn, was taken in the above-styled and numbered cause on the 18th of February, 2025, from 10:04 a.m. to 12:18 a.m., before Shawn Kelley, CSR No. 3448 in and for the State of Texas, by machine shorthand and computer-aided transcription, at 511 Broadway Street, Houston, Texas, pursuant to the Federal Rules of Civil Procedure and the provisions stated on the record or attached hereto.

Nell McCallum & Associates Inc. Houston (713) 861-0203

NELL McCALLUM & ASSOCIATES, INC.

EXHIBIT

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1 VIDEOGRAPHER: Good morning. Today is Tuesday,  
2 February 18th, 2025. The time is 10:04 a.m., and we are  
3 now on the record.

4 PHILLIP PICONE,  
5 having been first duly sworn, testified as follows:

6 EXAMINATION BY MR. SOH

7 Q. Can you please state your name for the record?

8 A. Phillip Picone.

9 Q. Mr. Picone, my name is Ken Soh, and I'm a lawyer  
10 with the City of Houston, and we're here to take your  
11 deposition in a lawsuit that you filed against the City  
12 over the, I'll call it, the charitable food ordinance.  
13 Do you understand that?

14 A. Yes.

15 Q. All right. So let's go ahead and get started.  
16 Tell me about yourself. Were you born in -- born in  
17 Houston?

18 A. No, I'm originally from New York, --

19 Q. Okay.

20 A. -- born and raised. I came down here in '78 when  
21 I was 21 --

22 Q. Okay.

23 A. -- to go to school.

24 Q. Great.

25 A. And the plan wasn't to live here. It was just to

1 in -- in scriptures that are quoted in both lawsuits,  
2 but at least those two portions of the Bible are copied  
3 in both lawsuits, correct?

4 A. There are different versions of the Bible that --

5 Q. Right.

6 A. -- might word things a little differently, but  
7 the concept comes through the same.

8 Q. But both the 2019 and 2023 lawsuits have the --  
9 in essence, the same -- at least the same two Bible  
10 verses quoted?

11 A. Apparently they do.

12 Q. Okay. Fair enough. All right. So in 2019, when  
13 you filed the first lawsuit against the City -- oh, by  
14 the way, have you filed any other lawsuits against any  
15 other parties in your life?

16 A. Never.

17 Q. Okay. So the only two lawsuits -- and I don't  
18 care about divorces or anything like that, but the only  
19 two lawsuits that you have been a part of were the two  
20 lawsuits that are currently in front of you marked as  
21 Exhibit 49 and 50, correct?

22 A. Yeah, Exhibit 49 would be the first lawsuit I've  
23 ever filed.

24 Q. And Exhibit 50 is --

25 A. Or been a part of.

1 Q. And Exhibit 50 is the second?

2 A. The second one.

3 Q. And only?

4 A. That's it.

5 Q. Okay. So back to your 2019 lawsuit, can you  
6 explain to me just in your own words why you wanted  
7 the -- the charitable feeding ordinance declared  
8 unconstitutional?

9 MS. GILBERT: Objection, the document speaks for  
10 itself.

11 MR. SOH: Okay.

12 A. Yeah, I think this whole paper kind of  
13 explains --

14 MR. SOH:

15 Q. And the reason why -- the reason why I'm asking  
16 you that is I do not want to get into -- I'm sure your  
17 lawyer's told you I do not want to get into discussions  
18 and conversations that you had with your lawyer at any  
19 point in time in this deposition.

20 What I'm just getting from you is in your own  
21 words, in 2019 when you filed this lawsuit, why did you  
22 want to declare the charitable feeding ordinance  
23 unconstitutional?

24 A. It's fair to say I probably wanted it to be  
25 declared unconstitutional when it was voted on in April

1 of 2012 and began to be enforced in June of 2012, but at  
2 that time, without any input from Food Not Bombs, Annise  
3 Parker, who wrote it or at least was mayor at the time  
4 and it had her blessings, she exempted Food Not Bombs  
5 from the ordinance.

6 She actually put out something on her letterhead  
7 and sent us a piece of paper saying that -- that we were  
8 exempt and that we could serve on that property. She  
9 actually wrote down the address of 500 McKinney, that we  
10 had permission to be there.

11 That made it a little hard for us to want to  
12 fight something, because we were still able to feed.  
13 You know, at that time we're looking at it like that,  
14 you know, we're still able to share our food. You know,  
15 but it had a chilling effect on other organizations that  
16 were feeding, as well, whether they were, you know,  
17 places where immigrants could go, you know, for -- you  
18 know, for safety or whether they were churches that were  
19 sharing food in their community or just other volunteers  
20 organizations. And it had a -- that had a chilling  
21 effect on them. And the way I know that is because when  
22 that ordinance went into effect, suddenly the numbers  
23 that -- of the people coming to Food Not Bombs increased  
24 dramatically because of those other places closing down.

25 And so, you know, but, like I said, you know, we

1 if you just want me to start asking you some questions  
2 about it, let me know.

3 A. Okay.

4 Q. All right. Before we get to that, I just saw  
5 something on my outline I forgot to ask you about. In  
6 all of your times at a Food Not Bombs Houston charitable  
7 feeding event at the library, okay, did any police  
8 officer or any employee of the -- of the City of Houston  
9 attempt to restrict, modulate, change any of -- any of  
10 Food Not Bombs Houston's speech?

11 A. Can you clarify it?

12 Q. Were you ever -- did any police officer or  
13 employee of the City of Houston tell anyone from Food  
14 Not Bombs hey, you can't wear that T-shirt, you can't  
15 say those things, you can't post those signs, anything  
16 like -- like that?

17 MR. KALLINEN: Objection, compound, asks a legal  
18 question.

19 A. I do recall people coming out of the library  
20 every once in a while and telling us we couldn't have  
21 been there.

22 MR. SOH:

23 Q. Right.

24 A. But who that person was, you know, I -- I didn't  
25 get involved.

1 Q. Sure. But with respect to your free speech  
2 claim, right, did any police officer or any employee of  
3 the City of Houston tell you you can't say that?

4 MR. KALLINEN: Objection, asked and answered and  
5 asks a legal question, confusing as to the -- the reach  
6 of speech.

7 A. Yeah, yeah, what he said, because -- because --  
8 because speech is not limited to what comes out of my  
9 mouth.

10 Q. Okay.

11 A. Right? And so in the case of Food Not Bombs,  
12 feeding people is my speech.

13 Q. Okay. With regards to any written or oral  
14 statements, did any police officer or employee of the  
15 City of Houston say to you or any other member of Food  
16 Not Bombs hey, you can't do that or you can't say that?

17 A. I can't recall.

18 Q. Okay.

19 A. Remember, now, I'm only there on Fridays, --

20 Q. Yeah, but --

21 A. -- you know.

22 Q. -- in your -- in your --

23 A. And I come and go, boom.

24 Q. In your 13 years or so of -- of participating in  
25 Food Not Bombs charitable feeding events at the downtown



1 public library, do you recall any police officer or any  
2 employee of the City of Houston saying hey, you can't  
3 say that or you can't post that sign?

4 A. You know what? Now that I'm thinking about it a  
5 little more, there was a guy named Marc Eichenbaum.

6 Q. Right.

7 A. Do you know Marc?

8 Q. I believe -- was that the -- the unofficial term  
9 for him would be the Houston homeless czar?

10 A. Something like that.

11 Q. Yes.

12 A. Yeah, the -- under Turner.

13 Q. Right.

14 A. Turner appointed him. He came down one time  
15 and -- that I recall, right? Because, again, I'm only  
16 there on Fridays. He came down one time and was around  
17 this time, before the tickets when Turner said we were  
18 going to start getting tickets. He came down and told  
19 us that we weren't supposed to be there, that we should  
20 be somewhere else.

21 We -- there was a conversation that went on  
22 regarding Riesner, Riesner, and he even said well, why  
23 don't you just move across the street one block over,  
24 and we'll put a canopy over there, and you can serve  
25 over there.



1           So, yeah, he was -- he was trying to tell us not  
2           to serve where we were serving. Would that be  
3           infringing on my speech?

4           MR. SOH: I'm going to object as nonresponsive.

5           Q. But, I mean, I guess let me rephrase the  
6           question. Okay?

7           A. Okay.

8           Q. From 2011 through the present, did any City of  
9           Houston police officer or employee ever tell you or did  
10          you ever witness a City of Houston police officer or a  
11          City of Houston employee telling another member of Food  
12          Not Bombs hey, you can't post that sign, you can't say  
13          that, or you can't wear that T-shirt?

14          MR. KALLINEN: Objection, compound, asked and  
15          answered.

16          A. How about you can't serve here, would that  
17          qualify?

18          MR. SOH:

19          Q. No, that's a different thing altogether. I'm  
20          just talking --

21          A. Okay.

22          Q. -- about the -- the --

23          A. Okay. Well, the -- the things that you just  
24          listed, --

25          Q. Right.

1 A. -- I would say I hadn't heard that.

2 Q. Okay. Fair enough. Let's go back to your  
3 declaration here, Exhibit 53. Okay? Some just quick  
4 questions about it. Paragraph 5 you talked about you  
5 attended St. Thomas -- I'll say St. Thomas University.  
6 You were a business major; is that correct?

7 A. Yeah.

8 Q. Okay.

9 A. I was going for accounting.

10 Q. Okay. Let's go to page 2. And, generally, your  
11 declaration includes a lot of the same information that  
12 was included in your 2019 and 2023 complaints, including  
13 scripture citations, Isaiah and Matthew, as well as the  
14 agreements and mission statement and vision of Food Not  
15 Bombs Houston; is that correct?

16 A. Right.

17 Q. Okay.

18 A. It is.

19 Q. Paragraph 8 you talk about you share food in  
20 north Houston and Spring Branch?

21 A. Yes.

22 Q. We talked about that previously, and I wanted to  
23 get some clarification on that. When you say north  
24 Houston and Spring Branch, are you talking about your  
25 previous testimony about helping to feed homeless people

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6   THE CITY OF HOUSTON, TEXAS,       ]  
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7  
8 -----  
9                   REPORTER'S CERTIFICATION

10                  DEPOSITION OF PHILLIP PICONE

11                  FEBRUARY 18, 2025

12                I, Shawn Kelley, Certified Shorthand Reporter  
13   No. 3448 in and for the State of Texas, hereby certify  
14   to the following:

15                That the witness, PHILLIP PICONE, was duly sworn  
16   by the officer and that the transcript of the oral  
17   deposition is a true record of the testimony given by  
18   the witness;

19                That the deposition transcript was submitted on  
20   \_\_\_\_\_, 2025, to Randall Kallinen,  
21   attorney for Plaintiff Phillip Picone, for examination,  
22   signature, and return to the offices of Nell McCallum &  
23   Associates, Inc., by \_\_\_\_\_, 2025.

24                That the amount of time used by each party at the  
25   deposition is as follows:

**NELL MCCALLUM & ASSOCIATES, INC.**

1 Kenneth Soh - (1 hour, 50 minutes)

2 That pursuant to information given to the  
3 deposition officer at the time said testimony was taken,  
4 the following includes all parties of record:

5 Randall Hiroshige, Attorney for the Plaintiffs  
6 Foot Not Bombs Houston and Brandon Walsh

7 Randall Kallinen, Attorney for the Plaintiff  
8 Phillip Picone

9 Kenneth Soh and Natoya Inglis, Attorneys for the  
10 Defendant The City of Houston, Texas

11 I further certify that I am neither counsel for,  
12 related to, nor employed by any of the parties in the  
13 action in which this proceeding was taken, and further  
14 that I am not financially or otherwise interested in the  
15 outcome of the action.

16 Certified to by me this \_\_\_\_ day of \_\_\_\_\_,  
17 2025.

18   
19 \_\_\_\_\_

20 Shawn Kelley, Texas CSR No. 3448  
21 Expiration Date: 1/31/24  
22 Nell McCallum & Associates  
23 Firm Registration No. 10095  
24 Expiration Date: 1/31/25  
25 718 Westcott  
Houston, Texas 77007  
(713) 861-0203

**NELL McCALLUM & ASSOCIATES, INC.**